

REPRESENTATIVE FOR PETITIONER: Stephen R. Snyder, Attorney

REPRESENTATIVE FOR RESPONDENT: Susan Engelberth, County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

COLLINS LEASING, LLC,	)	Petitions:	43-016-15-1-5-00050-16
	)		43-016-15-1-5-00051-16
Petitioner,)		
	)	Parcels:	43-07-23-200-047.000-016
v.	)		43-07-23-200-049.000-016
)		
KOSCIUSKO COUNTY ASSESSOR,	)	County:	Kosciusko
	)	Township:	Plain
Respondent.	)	Assessment Year:	2015

Appeal from the Final Determinations of the
Kosciusko County Property Tax Assessment Board of Appeals

February 1, 2017

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Did the Petitioner prove the subject properties 2015 assessments were incorrect?

PROCEDURAL HISTORY

2. The Petitioner timely filed two Petitions for Review of Assessments by Local Assessing Official (Form 130s) with the Kosciusko County Assessor. On November 23, 2015, the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued

decisions reducing the assessments for both properties but not to the level the Petitioner requested. The Petitioner timely filed two Petitions for Review of Assessment (Form 131s) with the Board.

3. On November 3, 2016, the Board's designated administrative law judge, Joseph Stanford (ALJ), held a consolidated hearing. Neither the Board nor the ALJ inspected the properties.

4. The following people were sworn as witnesses:

For the Petitioner: Karen Gehrke, director of property management.

For the Respondent: Susan Engelberth, Kosciusko County Assessor,
Teena Pence, Kosciusko County Deputy Assessor,
Darby L. Davis, commercial and industrial appraiser,
Tammi Parker, commercial and industrial appraiser.

5. The Petitioner submitted the following exhibits:¹

Petitioner Exhibit A: Property specific lease (CONFIDENTIAL),
Petitioner Exhibit B: "Petitioner's statement,"
Petitioner Exhibit C: Income capitalization worksheet,
Petitioner Exhibit D: Beacon property record cards.

6. The Respondent submitted the following exhibits:

Respondent Exhibit A: List of exhibits,
Respondent Exhibit B: Summary of testimony,
Respondent Exhibit C: Department of Local Government Finance (DLGF)
Memorandum, *Gross Rent Multiplier (GRM) Income Approach to Value on Single-family and Small Multi-family Properties*,²
Respondent Exhibit D: Board's Final Determination for *Michael R. & Nancy J. Hook vs. Union Twp. Ass'r*, Pet. Nos. 54-030-03-1-5-00001, et. al. (Ind. Bd. Tax Rev. February 9, 2006),
Respondent Exhibit E: Form 130 for 4284 North Aspen Drive with income calculation and property record card; Form 130 for 84

¹ The Petitioner submitted the same exhibits for both properties, however, the content of each exhibit is property specific.

² According to the Respondent's exhibit list, Respondent's Exhibit C should include a copy of Ind. Code § 6-1.1-4-39. While a copy of Ind. Code § 6-1.1-4-39 was not included as part of this exhibit, the Board takes judicial notice of such statutes.

- Respondent Exhibit F: Poplar Street with income calculation and property record card, Income calculation and lease for 4325 North Basswood Drive (CONFIDENTIAL),
- Respondent Exhibit G: Property record card, photograph, questionnaire, and Multiple Listing Service (MLS) sale listing for 4325 North Basswood Drive (CONFIDENTIAL),
- Respondent Exhibit H: Property record card, photograph, questionnaire, and MLS sale listing for 4284 North Aspen Drive (CONFIDENTIAL),
- Respondent Exhibit I: Property record cards, photographs, and sales disclosures for 2605 East Sage Drive, 2587 Sage Drive, 4151 North Basswood Drive, and 4347 North Basswood Drive,
- Respondent Exhibit J: "Valuation history of the subject properties,"
- Respondent Exhibit K: Sales-comparison analysis prepared by the Respondent,
- Respondent Exhibit L: Cost approach analysis prepared by the Respondent,
- Respondent Exhibit M: Respondent's gross rent multiplier (GRM) calculation and valuation of the subject properties using a GRM with supporting leases, property record cards, and MLS listings (CONFIDENTIAL),
- Respondent Exhibit N: Board's Final Determination for *JWR Properties vs. Perry Twp. Ass'r*, Pet Nos. 53-008-04-1-5-00743a, et. al. (Ind. Bd. Tax Rev. December 13, 2006),
- Respondent Exhibit O: "Summary and Reconciliation of Values."

7. The following additional items are recognized as part of the record:

- Board Exhibit A: Form 131s with attachments,
- Board Exhibit B: Hearing notices dated September 22, 2016,
- Board Exhibit C: Hearing sign-in sheets,
- Board Exhibit D: Power of Attorney for Mr. Snyder.

8. The properties under appeal are rental homes located at 4325 North Basswood Drive in Warsaw, and 4284 North Aspen Drive in Warsaw.

9. The PTABOA determined the same total assessment for both properties are \$135,100 each (land \$23,100 and improvements \$112,000).

10. The Petitioner requested a total assessment of \$85,200 (land \$23,100 and improvements \$62,100) for the property located at 4325 North Basswood Drive. The Petitioner requested a total assessment of \$95,600 (land \$23,100 and improvements \$72,500) for

the property located at 4284 North Aspen Drive. The Respondent, however, requested the total assessment for each property to be increased to \$175,600.

OBJECTIONS

11. Mr. Snyder objected to Petitioner's Exhibits I and K on the grounds of relevancy. Specifically, he argued these exhibits include sales of "single-family occupied structures" and are not relevant in determining the assessed value of rental properties. In response, Ms. Engelberth stated these exhibits were utilized to determine the GRM. The ALJ took the objection under advisement.
12. Mr. Snyder's objection goes to the weight of the evidence rather than its admissibility. Therefore, the objection is overruled and Petitioner's Exhibits I and K are admitted.

JURISDICTIONAL FRAMEWORK

13. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

14. The subject properties' assessments are too high. The two properties are "basically identical." Both homes are seven years old and have been utilized exclusively as rental properties. The 2% circuit breaker cap was applied further indicating the properties are utilized strictly for rental purposes.³ The properties should have been valued utilizing the income approach to value as required by Indiana law. However, the Respondent

³ The Board assumes the Petitioner was referring to tax credits under Ind. § Code 6-1.1-20.6-7.5, these are sometimes referred to as "tax caps."

erroneously relied on the cost approach to value. *Gehrke argument; Snyder argument* (citing *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006); *Pet'r Ex. D.*

15. In an attempt to prove more accurate assessments, Ms. Gehrke prepared a value computation for each property utilizing the income capitalization approach. She started with the income for each property by utilizing the “actual amounts” according to the specific leases. Potential income was \$13,200 for 4325 North Basswood Drive and \$14,400 for 4284 North Aspen Drive. Then she deducted actual expenses for each property by assembling them in categories such as insurance, maintenance, yard work, snow removal, management fees, and advertising. *Gehrke testimony; Pet'r Ex. A, C.*
16. Next, Ms. Gehrke calculated appropriate capitalization rates. For each property, she utilized what appears to be the band-of-investment method, multiplying the first mortgage rate by the percent financed. She added that component to the return on investment, the net tax rate, and the recapture rate. Because she was valuing property for tax purposes, she deducted the tax rate component back out of the total. Her computed capitalization rates were 10.3% for 4325 North Basswood Drive and 10.28% for 4284 North Aspen Drive. *Gehrke testimony; Pet'r Ex. C.*
17. Ms. Gehrke relied on the current assessed value for land to compute the income attributable to land. After applying the appropriate capitalization rate to the improvements, she computed a total property value of \$85,200 for 4325 North Basswood Drive and \$95,600 for 4284 North Aspen Drive. Ms. Gehrke completed her calculations in accordance with the International Association of Assessing Officials (IAAO). *Gehrke argument; Pet'r Ex. C.*
18. Finally, the Respondent’s GRM calculation is flawed. The GRM calculation should be based on sales of properties that “continued to be used as rentals.” Here, the Respondent utilized “sales to owners who subsequently occupied the properties themselves rather than renting them.” *Snyder argument (referencing Resp't Ex. B, C); Gehrke argument.*

RESPONDENT'S CONTENTIONS

19. The properties are currently under assessed. In 2011, prior to the properties being leased, the Petitioner listed both on the open market for \$179,900. The properties were initially assessed utilizing the cost approach. Nevertheless, the income capitalization approach is not the proper method to value single-family rental properties, as there is no “published rate” available for this type of property. According to statute, this approach is used to value four or more rental units. The GRM is the preferred method for valuing single-family rental properties. *Engelberth argument* (citing Ind. Code § 6-1.1-4-39; *Hook v. Union Twp. Ass'r, Ind. Bd. of Tax Rev. pet. nos. 54-030-03-1-5-00027, et al.* (February 9, 2006)); *Resp't Ex. B, C, D, G.*

20. In any event, the Petitioner's income capitalization calculations are flawed. Ms. Gehrke relied on the properties' specific income, expenses, and mortgage rates rather than deriving that information from the market. The mortgage interest shown for the subject properties is 6%, while it is 5.25% for other properties owned by the Petitioner. Furthermore, the replacement reserves given for the two properties are “exceedingly high.” Reserves were 17% and 19% for these two properties, but only 6% for another property owned by the Petitioner. Even if property-specific data was acceptable, the income figures Ms. Gehrke used in her calculation for 4325 North Basswood Drive does not match the most current lease. *Engelberth argument (referencing Pet'r Ex. A, C); Resp't Ex. B, E, F.*

21. When properly processed, the three generally recognized valuation methods should produce approximately the same estimate of value. To illustrate that point, the Respondent estimated the market value for the properties utilizing the sales-comparison approach, the cost approach, and the GRM method. For her sales-comparison analysis, she determined a square-foot value for nine homes that sold in 2014, and applied the median value to the properties under appeal. The cost approach was “derived from the Guidelines.” Finally, for her GRM analysis, she developed a gross rent multiplier “by dividing the sale price of rental properties by their monthly gross income, and then

valued the subject properties by multiplying the market rent by the gross rent multiplier.” Ultimately, her value conclusions were \$210,000 under the cost approach, \$175,600 using the GRM method, and \$230,000 under the sales-comparison approach. Because the GRM method is the “preferred method,” she requested that the assessments be increased to \$175,600. *Engelberth argument; Resp’t Ex. B, D, K, L, M, O.*

22. In response to the Petitioner’s testimony regarding “tax caps,” the Respondent stated “we roll it to the auditor.” The Respondent went on to argue “we have many homes in our county that are not homesteaded (sic), are not owner-occupied so to speak, but the cap 2 is not just for rentals.” *Engelberth argument.*

BURDEN OF PROOF

23. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
24. First, Ind. Code. § 6-1.1-15-17.2 “applies to any review of appeal of an assessment under this chapter if that assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
25. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased

above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and is applicable to all appeals pending before the Board.

26. Here, the Petitioner, who was represented by counsel, accepted the burden of proof. It appears from the subject property record cards the total assessments of both properties decreased from 2014 to 2015. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner for both properties.

ANALYSIS

27. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
28. Regardless of the valuation method used, a party must explain how its evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).
29. There is a separate statute, however, regarding the valuation of certain rental properties such as the properties at issue here. Specifically, Ind. Code § 6-1.1-4-39 provides in part that the GRM “is the preferred method for valuing...real property that has at least one (1) and not more than four (4) rental units...”

30. Here, the parties' overriding argument concerns the methodology used to compute the assessments. The Petitioner argued that the income capitalization approach is the proper method to value the properties. While the Respondent initially valued the properties utilizing the cost approach, she argued at the hearing that the GRM method is the "correct methodology," and offered her computation using that method.
31. Because the GRM method is described only as the "preferred method," rather than mandatory, the statute contemplates circumstances in which the GRM method should be disregarded. Consequently, the question the Board must address is not one of methodology, but whether the Petitioner established the current assessments are incorrect and that its income capitalization computation resulted in an accurate market value-in-use for the properties. For the reasons that follow, the Board finds the Petitioner failed to do so.
32. In valuing a property under the income approach, it is appropriate to consider the historic and projected income and expense data of the property in question. It is also paramount to consider that same kind of data from other comparable properties in order to make accurate, realistic projections about the income stream a property should be expected to produce. Where the income and expense data for the subject property is not consistent with what the market data shows, generally accepted appraisal principles require further examination and analysis. For example, considering both types of income and expenses helps to protect against distortions and inaccurate value estimate that might be caused by extraneous factors such as bad management or poor business decisions. *See Indiana MHC, LLC v. Scott Co. Ass'r*, 987 N.E.2d 1182, 1186 (Ind. Tax Ct. 2013). Here, the Petitioner's analysis failed to consider other comparable properties. The analysis only considered the two properties currently under appeal. Also, as the analysis was not completed by a certified appraiser, the only indication given by Ms. Gehrke that generally accepted appraisal principles were followed was her statement that she "completed her calculations in accordance with IAAO." This statement by itself is not enough to convince the Board the analysis complies with generally accepted appraisal

principles. Therefore, the analysis lacks relevant market data and in turn lacks probative value.

33. Additionally, the Petitioner's capitalization rates also lack market support. Ms. Gehrke utilized property-specific data to determine her capitalization rates. In doing so, she failed to establish that the items she utilized were typical for the market. Further, it is not clear if the data she relied on is relevant to the properties' values as of March 1, 2015. Thus, the Board is unable to determine if the calculations are representative of the local market.

34. Finally, the Petitioner raised an argument regarding "tax caps." Indiana Code § 6-1.1-20.6-7.5 addresses the calculation of the tax credits:

(a) A person is entitled to a credit against the person's property tax liability for property taxes first due and payable after 2009. The amount of the credit is the amount by which the person's property tax liability attributable to the person's:

- (1) homestead exceeds one percent (1%);
- (2) residential property exceeds two percent (2%);
- (3) long term care property exceeds two percent (2%);
- (4) agricultural land exceeds two percent (2%);
- (5) nonresidential real property exceeds three percent (3%); or,
- (6) personal property exceeds three percent (3%);

of the gross assessed value of the property that is the basis for the determination of property taxes for that calendar year.

35. The Board infers the Petitioner raised this issue to argue that the Respondent recognized the subject properties are rental properties and not owner-occupied homesteads because the 2% tax cap was applied. The fact that the Auditor actually applies the tax caps is insignificant to the Petitioner's claim. There was no dispute that the properties are rental properties. To the extent that the Petitioner claims the tax caps are wrong or incorrectly applied, it failed to make a prima facie case.

36. The Petitioner failed to make a prima facie case that the 2015 assessments are incorrect. However, because the Respondent sought an increase in the assessments, the Board must examine the Respondent's evidence. The Respondent offered three estimates of values

for the properties by utilizing three different approaches to value: the cost approach, the sales-comparison approach, and an estimate of value using the GRM method. Because the Respondent based her assessment request on the use of the GRM method, and argued that was the statutorily-required approach, the Board will limit its analysis to the evidence offered in support of the GRM method.

37. The GRM method develops an income multiplier by identifying market data for sales of comparable income-producing properties and calculates the ratio of the sale price to the gross income at the time of the sale. An opinion of value can then be calculated by multiplying the GRM by the annual income base for the subject property.
38. The GRM method eliminates the complex value adjustments required by the sales-comparison approach by assuming differences between the properties are reflected in their respective rental rates. In order to derive and apply a reliable GRM for valuation purposes, the properties analyzed must be comparable to the subject property and to one another in terms of physical, geographic, and investment characteristics. To establish that properties are comparable, a party must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Long*, 821 N.E.2d at 471. Specific reasons must be provided as to why a proponent believes a property is comparable. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of two properties. *Id.* at 470. Here, the Respondent failed to account for any relevant differences among the properties, such as, among other things, the indication that some may have city water and some may not. Thus, Respondent failed to establish comparability.
39. Another flaw in the Respondent’s analysis is that it appears she included sales to non-investors in her GRM calculation. Any income-based method of valuing property is designed to measure how much an *investor* is willing to pay for an income stream. But the Respondent included sales to individuals who were not intending to purchase an

income stream, but instead were purchasing a home to live in. For these reasons, the Respondent's analysis lacks probative value.

40. Thus, for the reasons set forth, the Respondent failed to make a prima facie case for increasing the assessments to \$175,600.

SUMMARY OF FINAL DETERMINATION

41. The Petitioner failed to make a prima facie case for reducing the assessments. The Respondent failed to make a prima facie case for increasing the assessments. Accordingly, no change will be made to the 2015 assessments.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.